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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,249	04/08/2004	Thomas Klein	ESKO-044	8406
21921	7590	03/25/2005	EXAMINER	
DOV ROSENFELD 5507 COLLEGE AVE SUITE 2 OAKLAND, CA 94618			EVANISKO, LESLIE J	
			ART UNIT	PAPER NUMBER
			2854	

DATE MAILED: 03/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/821,249	<b>Applicant(s)</b> KLEIN ET AL.	
	<b>Examiner</b> Leslie J. Evanisko	<b>Art Unit</b> 2854	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 April 2004.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-9 and 16-24 is/are rejected.
- 7) ☒ Claim(s) 3, 10-15 and 25-28 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/08/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 1-15 are objected to because of the following informalities:

With respect to claim 1, it is suggested that the terms “a rest horizontal position” , “a loading vertical position” “a height” in lines 12-14 be deleted and replaced with --the rest horizontal position--, --the loading vertical position--, and --the height-- since each of these terms was previously recited in lines 5-7.

With respect to claim 3, as written, this claim is merely a functional recitation of a desired mode of operation. To correct this problem, it is suggested that the phrase --is configured to partially remove-- be inserted in place of --partially removes-- to provide a more structural recitation in the claim.

With respect to claim 8, the term “the particular compartment’s respective imaged vertical position” has no proper antecedent basis since no imaged vertical position was ever previously recited. To correct this problem, it is suggested that this language be amended to the following or other similar language: --an imaged vertical position of the respective compartment--.

Appropriate correction and/or clarification is required.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-2, 4-6, 9, 16-19 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rombult et al. (US 5,738,014) in view of Seto et al. (US 4,878,799). Rombult et al. teach an apparatus and method as recited with the exception of each compartment being movable to a loading horizontal position at the loading vertical position as recited.

In particular, note Rombult et al. teach an apparatus and method of loading a printing plate 26 to an imager 16 comprising pre-loading a printing plate into a particular compartment of a magazine 34, 36 containing a plurality of compartments 24 each for holding (at least) a single printing plate 26, the compartments arranged vertically and movable in a vertical direction, each compartment having a respective rest vertical position at a rest horizontal position (original position of compartment 24 before movement), each respective compartment further having a loading vertical position (position after movement by elevator mechanism 40) at which the respective compartment is at a height for loading onto the imager or unloading from the imager, and lifting or lowering (with elevator mechanism 40) the particular compartment from its rest vertical position at its rest horizontal position to its loading vertical position such that the particular plate can be loaded onto the imager. The device of Rombult et al. also includes an automatic plate loader 25, 28 for removing the plate from the particular compartment and loading the plate onto the imager. Again, note the device and method of Rombult is broadly capable of loading flexographic plates and therefore, Rombult et al. meets the apparatus and method for loading and unloading flexographic plates as recited.

Note Rombult et al. teach the compartments (after vertical positioning) are stationary while the automatic plate loader mechanism is horizontally movable into contact with the plate in the vertically positioned compartment.

However, Seto et al. teach an apparatus and method including a plurality of vertically and horizontally movable compartments such that each compartment is first vertically moved to a loading vertical position and then horizontally moved to a loading horizontal position into contact with a loader mechanism to pick up the film sheet. See, for example, Figures 1 and 3 and the embodiment of Figures 10-13 as described in columns 10-11 in particular.

In view of this teaching, it would have been obvious to one of ordinary skill in the art to provide the compartments of Rombult et al. to be horizontally movable to a loading horizontal position when at the vertical loading position to provide a more compact and simplified mechanism for loading the plates into the imaging device (i.e., one that does not require any additional and potentially complicated horizontal movement of the automatic plate loader mechanism).

With respect to claim 2, the automatic plate loader mechanism of Rombult et al. as modified by Seto et al. would function to remove the plate from the compartment at the plate's loading horizontal position as recited.

With respect to claims 4 and 17, note the automatic plate loader 25, 28 of Rombult et al. includes an automatic protective sheet remover 25 for removing the protective sheet prior to loading of the plate on the imager.

With respect to claims 5-6 and 18-19, note Rombult et al. teach the lifting mechanism 40 is operative to lift and lower either the entire group of tables (see column 4, lines 64-67) or lifting the compartments individually

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(depending upon which compartments are supported by the table support mechanism) as described in column 4, lines 49-61 and column 5, lines 41-44).

With respect to claims 9 and 24, note Rombult et al. specifically teach anywhere from 2 to 5 compartments and Seto et al. show at least 5 compartments. Although neither specifically teaches at least 10 compartments, it would have been obvious to one of ordinary skill in the art to provide as many compartments as necessary or desired to provide for any necessary or desired number of different sizes or types of plates, each different plate being housed in a separate compartment. Therefore, there is no unobviousness in providing at least 10 compartments in the apparatus and method of Rombult et al. as modified by Seto et al. to provide a larger selection of plates (of different sizes or types) to be imaged in the plate imager.

### ***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-2, 4-9, and 16-24 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of copending Application No. 10/791,305 in view of Rombult et al. (US 5,738,014). US Application No. 10/791,305 teaches an apparatus and method for loading and unloading flexible plates to and from an imager as recited with the exception of the apparatus including an automatic plate loader to remove the plate from the particular compartment and load the plate onto the imager. However, Rombult et al. teach an automated plate imaging system including an automatic plate loader 25, 28 that removes the plate from the particular compartment 24 and loads the plate on the imager 20. In view of this teaching, it would have been obvious to one of ordinary skill in the art to provide the apparatus and method of 10/791,305 with an automatic plate loader as taught by Rombult et al. to provide an apparatus and method for loading plates in an imager that requires less involvement of a human operator and therefore provides imaging of plates in a more rapid manner.

With respect to claim 2, 10/791,305 as modified by Rombult et al. would provide the plate loader to remove the plate from the particular compartment at the plate's loading horizontal position.



With respect to claims 4 and 17, note Rombult et al. teach the automatic plate loader 25, 28 can include an automatic protective sheet remover 25 to remove the protective sheet prior to loading of the plate on the imager.

With respect to claims 5 and 18, note claims 3 and 12 of 10/791,305.

With respect to claims 6 and 19, note claims 4 and 13 of 10/791,305.

With respect to claims 7 and 20, note claims 5 and 14 of 10/791,305.

With respect to claims 8 and 21, note claims 6 and 15 of 10/791,305.

With respect to claims 9 and 24, note claims 9 and 18 of 10/791,305.

With respect to claim 22, note claims 7 and 16 of 10/791,305.

With respect to claim 23, note claims 8 and 17 of 10/791,305.

This is a provisional obviousness-type double patenting rejection.

#### ***Allowable Subject Matter***

7. Claims 3, 10-15, and 25-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The following is a statement of reasons for the indication of allowable subject matter: With respect to claim 3, the prior art of record fails to teach or fairly suggest an apparatus for loading and unloading flexographic plates to and from an imager having all of the structure as recited, in combination with and particularly including, the automatic plate loader being configured to

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partially remove the plate from the particular compartment prior to the plate being moved to the plate's loading horizontal position.

With respect to claims 10 and 25, the prior art of record fails to teach or fairly suggest an apparatus for loading and unloading flexographic plates to and from an imager having all of the structure as recited, in combination with and particularly including, a first mechanism including a first set of vacuum holders under control of the control system, the first mechanism movable to move a plate in the particular compartment to an intermediate horizontal position and further moving the plate from the intermediate horizontal position to an image loading position.


### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Boutet (US 5,246,326) and Azzaroni (US 4,539,794) each teach a machine for loading and unloading imageable films having obvious similarities to the claimed subject matter.

~~10. Any inquiry concerning this communication or earlier communications~~  
from the examiner should be directed to **Leslie J. Evanisko** whose telephone number is **(571) 272-2161**. The examiner can normally be reached on M-Th 7:30 am-6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew H. Hirshfeld can be reached on (571) 272-2168. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Leslie J. Evanisko  
Primary Examiner  
Art Unit 2854

lje  
March 21, 2005

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